

(2011) 10 MAD CK 0051

Madras High Court

Case No: Writ Petition No. 2749 of 2007

G. Saradha

APPELLANT

Vs

Director of School Education,
Chennai-6 and Others

RESPONDENT

Date of Decision: Oct. 12, 2011

Acts Referred:

- Constitution of India, 1950 - Article 14, 21
- Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959 - Section 3

Citation: (2012) 2 MLJ 389

Hon'ble Judges: D. Hariparanthaman, J

Bench: Single Bench

Advocate: A. Arulmozhi, for the Appellant; Rm. Muthukumar, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

D. Hariparanthaman, J.

The Original Application in O.A. No. 1636 of 2001 before the Tamil Nadu Administrative Tribunal is the present Writ petition. Heard Ms. A. Arulmozhi, learned counsel for the petitioner and Mr. Rm. Muthukumar, learned Government Advocate for the respondents.

2. The petitioner was appointed as Part Time Sweeper on 5.12.1983 in Government High School, Pappanampatti, Dharmapuri District and has rendered 26 years of service. However, the petitioner was not regularised in service and therefore, she claimed regularisation of her service as a Full Time Sweeper. In this regard, the petitioner has relied on a judgment of this Court dated 23.12.2009 in W.P. No. 48431 of 2006 and submits that the judgment is squarely covers the issue. The same is not seriously disputed by the learned Government Advocate. In paragraph Nos. 11 to 15

of the aforesaid Judgment dated 23.12.2009 are extracted hereunder:

"11. Since the petitioner has been working as part time Sweeper from 1979, the respondents are not justified in keeping her as part time employee till she reached the age of superannuation in 2008. That is, she was appointed as part time employee in 1979 and retired as part time employee after rendering 30 years of service. Such an action of the respondents is highly arbitrary and violative of Article 14 of the Constitution.

12. When the second respondent admitted in the reply affidavit that the part time employees were brought to regular establishment by G.O. Ms. No. 528 referred to above, the second respondent could have sought relaxation for sponsorship through Employment Exchange as the petitioner was employed as part time Sweeper from 1979 onwards. Further, as rightly contended by the learned counsel for the petitioner, sponsorship through Employment Exchange could not be a mandatory one in the case of unskilled workers like Sweepers in view of Section 3 of the Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959. Further, the order dated 29.7.2008 in W.P. No. 18126 of 2008 of the learned single Judge of this Court and order dated 3.8.2009 in W.A. No. 230 of 2009 of the Division Bench of this Court as relied on by the learned counsel for the petitioner squarely applies to the facts of this case also.

13. I have considered the judgments of this Court dated 29.7.2008 in W.P. No. 18126 of 2008 relied by the learned counsel for the petitioner, wherein, this Court directed regularisation of part time employee as full time employee on completion of ten years of service and the same was also confirmed by the Division Bench of this Court on 3.8.2009 in W.A. No. 230 of 2009. The said judgments are squarely applies to the present case.

14. In such circumstances, the impugned order dated 31.1.2001 of the third respondent is liable to be quashed and accordingly, it is quashed. Further, a direction is issued to the first respondent to regularise the service of the petitioner on completion of ten years of service in the light of the judgment of this Court dated 29.7.2008 in W.P. No. 18126 of 2008 and as confirmed by the order dated 3.8.2009 in W.A. No. 230 of 2009, within a period of eight weeks from the date of receipt of a copy of this order. The respondents are further directed to pay the consequential benefits thereon, within a period of eight weeks thereafter.

15. The writ petition is allowed on the above terms. No costs."

3. In this case, there is no order declining to regularise the service of the petitioner. There is an inaction on the part of the petitioner. The petitioner has rendered service for more than two decades as stated above. Keeping the employees without regularising them for decades together, particularly when G.O. Ms. No. 528, Personnel and Administrative Reforms (Per. F) Department, dated 10.10.1988 provides for regularisation of service of part time employees like the petitioner, is

arbitrary and violative of Article 14 and 21 of the Constitution of India. In these circumstances, the Respondents are directed to regularise the service of the petitioner as Full time Sweeper on completion of 10 years of service and to pay the consequential benefits within a period of eight weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs.